SUPREME COURT OF THE UNITED STATES.

No. 208.—October Term, 1925.

The United States of America, vs. Jose Candelaria, et al. } On Certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

[June 1, 1926.]

Mr. Justice Van Devanter delivered the opinion of the Court.

In 1922 the United States brought a suit in the federal district court for New Mexico against Jose Candelaria and others to quiet in the Indian Pueblo of Laguna the title to certain lands alleged to belong to the pueblo in virtue of a grant from Spain, its recognition by Mexico and a confirmation and patent by the United States. The suit was brought on the theory that these Indians are wards of the United States and that it therefore has authority and is under a duty to protect them in the ownership and enjoyment of their lands. The defendants were alleged to be asserting a false claim to the lands and to be occupying and fencing the same to the exclusion of the Indians. In their answer the defendants denied the wardship of the United States and also set up in bar two decrees rendered in prior suits brought against them by the pueblo to quiet the title to the same lands. One suit was described as begun in 1910 in the territorial court and transferred when New Mexico became a State to the succeeding state court, where on final hearing a decree was given for the defendants on the merits. The other was described as brought in 1916 in the federal district court and resulting in a decree of dismissal on the grounds that the complaint disclosed that the matters presented "were res judicata and that there was no federal question in the case." In the replication the United States alleged that it was not a party to either of the prior suits; that it neither authorized the bringing of them nor was represented by the attorney who appeared for the pueblo; and therefore that it was not bound by the decrees.

On the case thus presented the court held that the decrees operated to bar the prosecution of the present suit by the United States,

and on that ground the bill was dismissed. An appeal was taken to the Circuit Court of Appeals, which after outlining the case as just stated, has certified to this Court the following questions:

1. Are Pueblo Indians in New Mexico in such status of tutelage as to their lands in that State that the United States, as such guardian, is not barred either by a judgment in a suit involving title to such lands begun in the territorial court and passing to judgment after statehood or by a judgment in a similar action in the United States District Court for the District of New Mexico, where, in each of said actions, the United States was not a party nor was the attorney representing such Indians therein authorized so to do by the United States?

2. Did the state court of New Mexico have jurisdiction to enter a judgment which would be *res judicata* as to the United States, in an action between Pueblo Indians and opposed claimants concerning title to land, where the result of that judgment would be to disregard a survey made by the United States of a Spanish or Mexican grant pursuant to an act of Congress confirming such grant to said Pueblo Indians?

The status of the Pueblo Indians and their lands, and the relation of the United States to both, were considered in *United States* v. *Sandoval*, 231 U. S. 28. We there said (pp. 45-47):

"Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a State. . . . 'It is for that body [Congress] and not for the courts, to determine when the true interests of the Indian require his release from such condition of tutelage.'

"Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress and not by the courts.

"As before indicated, by a uniform course of action beginning as early as 1854 and continued up to the present time, the legislative and executive branches of the Government have regarded

and treated the Pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes; and, considering their Indian lineage, isolated and communal life, primitive customs and limited civilization, this assertion of guardianship over them cannot be said to be arbitrary but must be regarded as both authorized and controlling."

And also (p. 48): "We are not unmindful that in United States *v.* Joseph, 94 U. S. 614, there are some observations not in accord with what is here said of these Indians, but as that case did not turn upon the power of Congress over them or their property, but upon the interpretation and purpose of a statute not nearly so comprehensive as the legislation now before us, and as the observations there made respecting the Pueblos were evidently based upon statements in the opinion of the territorial court, then under review, which are at variance with other recognized sources of information, now available, and with the long continued action of the legislative and executive departments, that case cannot be regarded as holding that these Indians or their lands are beyond the range of Congressional power under the Constitution."

While we recognized in that case that the Indians of each pueblo, collectively as a community, have a fee simple title to the lands of the pueblo (other than such as are occupied under executive orders), we held that their lands, like the tribal lands of other Indians owned in fee under patents from the United States, are "subject to the legislation of Congress enacted in the exercise of the Government's guardianship" over Indian tribes and their property.

The purpose of Congress to subject the Pueblo Indians and their lands to that legislation, if not made certain before the decision in the *Joseph* case, was made so in various ways thereafter. Two manifestations of it are significant. A decision of the territorial court in 1904 holding their lands taxable, 12 N. M. 139, was promptly followed by a congressional enactment annulling the taxes already levied and forbidding further levies, c. 1479, 33 Stat. 1069; and a decision of that court in 1907 construing the statute which prohibits the sale of liquor to Indians and its introduction into the Indian country as not including these Indians or their lands, 14 N. M. 1, was shortly followed by an enactment declaring that the statute should be construed as including both, c. 310, 36 Stat. 560. It also is of significance that in 1898 Congress provided for the employment by the Secretary of the Interior of a special attorney to represent the Pueblo Indians and protect their interests, c. 545, 30 Stat. 594, and that from that

time to this a special attorney has been so employed and has been paid out of appropriations made by Congress for the purpose, c. 42, 42 Stat. 1194.

Many provisions have been enacted by Congress—some general and others special—to prevent the Government's Indian wards from improvidently disposing of their lands and becoming homeless public charges. One of these provisions, now embodied in section 2116 of the Revised Statutes, declares: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." This provision was originally adopted in 1834, c. 161, sec. 12, 4 Stat. 730, and, with others "regulating trade and intercourse with the Indian tribes," was extended over "the Indian tribes" of New Mexico in 1851, c. 14, sec. 7, 9 Stat. 587.

While there is no express reference in the provision to Pueblo Indians, we think it must be taken as including them. They are plainly within its spirit and, in our opinion, fairly within its words, "any tribe of Indians." Although sedentary, industrious and disposed to peace, they are Indians in race, customs and domestic government, always have lived in isolated communities, and are a simple, uninformed people, ill-prepared to cope with the intelligence and greed of other races. It therefore is difficult to believe that Congress in 1851 was not intending to protect them, but only the nomadic and savage Indians then living in New Mexico. A more reasonable view is that the term "Indian tribe" was used in the acts of 1834 and 1851 in the sense of "a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory." *Montoya* v. *United States*, 180 U. S. 261, 266. In that sense the term easily includes Pueblo Indians.

Under the Spanish law Pueblo Indians, although having full title to their lands, were regarded as in a state of tutelage and could alienate their lands only under governmental supervision. See *Chouteau* v. *Molony*, 16 How. 203, 237. Text writers have differed about the situation under the Mexican law; but in *United States* v. *Pico*, 5 Wall. 526, 540, this Court, speaking through Mr. Justice Field, who was specially informed on the subject, expressly

recognized that under the laws of Mexico the government "extended a special guardianship" over Indian pueblos and that a conveyance of pueblo lands to be effective must be made "under the supervision and with the approval" of designated authorities. And this was the ruling in *Sunol* v. *Hepburn*, 1 Cal. 254, 274, *et seq.* Thus it appears that Congress in imposing a restriction on the alienation of these lands, as we think it did, was but continuing a policy which prior governments had deemed essential to the protection of such Indians.

It was settled in *Lane* v. *Pueblo of Santa Rosa*, 249 U. S. 110, that under territorial laws enacted with congressional sanction each pueblo in New Mexico—meaning the Indians comprising the community—became a juristic person and enabled to sue and defend in respect of its lands. But in that case there was no occasion and no attempt to determine whether or to what extent the United States would be bound by the outcome of such a litigation where it was not a party. That was a suit brought by the Pueblo of Santa Rosa to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from carrying out what was alleged to be an unauthorized purpose and attempt to dispose of the Pueblo's lands as public lands of the United States. Arizona was formed from part of New Mexico and when in that way the pueblo came to be in the new territory it retained its juristic status. Beyond establishing that status and recognizing that the wardship of the Indians was not an obstacle to the suit the case is without bearing here. In the opinion it was said: "The Indians are not here seeking to establish any power or capacity in themselves to dispose of the lands, but only to prevent a threatened disposal by administrative officers in disregard of their full ownership. Of their capacity to maintain such a suit, we entertain no doubt. The existing wardship is not an obstacle, as is shown by repeated decisions of this Court, of which *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, is an illustration."

With this explanation of the status of the Pueblo Indians and their lands, and of the relation of the United States to both, we come to answer the questions propounded in the certificate.

To the first question we answer that the United States is not barred. Our reasons will be stated. The Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without

its consent. A judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction. The United States has an interest in maintaining and enforcing the restriction which cannot be affected by such a judgment or decree. This Court has said in dealing with a like situation: "It necessarily follows that, as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the Government is a stranger, can affect its interest. The authority of the United States to enforce the restraint lawfully created cannot be impaired by any action without its consent." *Bowling and Miami Improvement Co.* v. *United States*, 233 U. S. 528, 534. And that ruling has been recognized and given effect in other cases. *Privett* v. *United States*, 256 U. S. 201, 204; *Sunderland* v. *United States*, 266 U. S. 226, 232.

But, as it appears that for many years the United States has employed and paid a special attorney to represent the Pueblo Indians and look after their interests, our answer is made with the qualification that, if the decree was rendered in a suit begun and prosecuted by the special attorney so employed and paid, we think the United States is as effectually concluded as if it were a party to the suit. *Souffront* v. *Compagnie des Sucreries*, 217 U. S. 475, 486; *Lovejoy* v. *Murray*, 3 Wall. 1, 18; *Claflin* v. *Fletcher*, 7 Fed. 851, 852; *Maloy* v. *Duden*, 86 Fed. 402, 404; *James* v. *Germania Iron Co.*, 107 Fed. 597, 613.

Coming to the second question, we eliminate so much of it as refers to a possible disregard of a survey made by the United States, for that would have no bearing on the court's jurisdiction or the binding effect of the judgment or decree, but would present only a question of whether error was committed in the course of exercising jurisdiction. With that eliminated, our answer to the question is that the state court had jurisdiction to entertain the suit and proceed to judgment or decree. Whether the outcome would be conclusive on the United States is sufficiently shown by our answer to the first question.

Questions answered as stated in this opinion.